

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE,
KNOXVILLE DIVISION

SEBASTIAN AMELLER, a minor,
by parent and next friend,
DONNA AMELLER, and DONNA
AMELLER, Individually,

Plaintiffs,

v.

No. _____
JURY DEMANDED

OBER GATLINBURG, INC.

Defendant.

COMPLAINT

Plaintiff Donna Ameller, both individually and as parent and next friend of Sebastian Ameller, a minor, by and through counsel, and for their cause of action against the defendant Ober Gatlinburg, Inc., state as follows:

PARTIES

1. Plaintiffs, Sebastian Ameller and Donna Ameller are both citizens and residents of 373 NW 101st Avenue, Coral Springs, Broward County, Florida, 33071.

2. Upon information and belief, the defendant, Ober Gatlinburg, Inc. (hereinafter “Defendant”) is a Tennessee for-profit corporation with a principal place of business located at 1001 Parkway, Suite 2, Gatlinburg, Tennessee 37738. Defendant can be served with process through their registered agent, Kent Anders, at 1001 Parkway, Suite 2, Gatlinburg, Tennessee 37738.

JURISDICTION AND VENUE

3. Venue is proper before this Honorable Court because the events giving rise to this cause of action occurred in Sevier County, Tennessee.

4. This Complaint was filed within the applicable statute of limitations.

5. As Plaintiffs and Defendant are citizens of different states, this Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §1332 based upon said diversity of citizenship.

6. Defendant Ober Gatlinburg has been properly served with process in this matter.

FACTS

7. On or about July 30, 2021, Defendant Ober Gatlinburg, Inc. (hereinafter “Ober Gatlinburg”) owned and operated an all-season amusement park and ski resort in the tourist town of Gatlinburg, Sevier County, Tennessee.

8. The amusement park operated by Ober Gatlinburg, Inc. includes a host of attractions and activities designed to bring in and entertain visitors. These activities include, but are not limited to skiing, tubing, ice skating, a mountain coaster, alpine slide and rock wall climbing. Ober Gatlinburg charges individuals a fee for each of these activities. The activity which is the subject of this action and is rock-climbing on an artificial “rock” wall, for which, like all other activities, Ober Gatlinburg charges an admission price.

9. On or about July 30, 2021, Plaintiffs Donna Ameller and minor Sebastian Ameller were paying customers and business invitees at Ober Gatlinburg, where they paid good and valuable consideration to participate in the rock-climbing

attraction.

10. Ober Gatlinburg advertises for the “Ober Rock Wall” on its website as follows:

The rock wall is one of Ober Gatlinburg’s newest attractions. Each session allows up to five individuals to scale a 30-foot artificial rock wall. The climbers are secured via a built-in belaying system which allows climbers to climb up to the top of the wall and then rappel down.

Ober Gatlinburg also advertises that the “Ober Rock Wall” is appropriate for children “Ages 5 & up.”

11. On and around July 30, 2021, Donna Ameller had traveled to the Gatlinburg area with her nine-year-old son, Sebastian, for a baseball tournament. During the trip, they visited Ober Gatlinburg with other team members and parents to enjoy the attractions. During the visit, Sebastian wanted to climb the rock wall with his friends.

12. Ober Gatlinburg appeared to have employees make sure all persons, children included, who wanted to climb the rock wall were properly harnessed and attached to the safety line and belaying system that were designed to protect climbers who let go or fell from the wall as they climbed.

13. Ober Gatlinburg, however, through the acts of its employees, failed to harness Sebastian before he started climbing. As a result, Sebastian was not attached to the safety line and belaying system.

14. During his time on the wall, Sebastian reached the top of the wall and

then began to downclimb. When he was about mid-way to the bottom of the wall, he fell from the wall.

15. Because Ober Gatlinburg had failed to place Sebastian in a safety harness and attach him to the belay system, Sebastian's fall was not arrested until he hit the concrete at the bottom of the rock wall.

16. Ober Gatlinburg had not placed any protective padding around the base of the climbing wall in the event a climber did free fall. So, when Sebastian struck the ground, he struck his head directly against concrete, suffering a skull fracture and traumatic brain injury.

17. Donna Ameller was standing close to the wall and saw her son fall and heard his head strike the concrete. The experience of seeing her son fall and witnessing him strike his head, caused her, and continues to cause her great mental pain and suffering and emotional injury.

18. As a direct result of the fall, Sebastian Ameller sustained serious and permanent injuries as described herein.

CAUSE OF ACTION: NEGLIGENCE

19. Ober Gatlinburg owed the general public, including the plaintiffs, a duty to use reasonable care in the operation of its rock-climbing wall attraction. This duty of care required Ober Gatlinburg to exercise reasonable and ordinary care to prevent foreseeable injuries or to adequately warn its patrons of known risks.

20. Ober Gatlinburg breached its duty of care in the following ways:

a. Ober Gatlinburg's employee(s) failed to properly harness the minor plaintiff before allowing him to climb the 30-foot rock wall, which

resulted in an unreasonably dangerous hazard to the plaintiff;

b. Ober Gatlinburg failed to hire qualified employees to operate the rock-climbing attraction;

c. Ober Gatlinburg failed to properly train its employees on how to safely operate the rock-climbing attraction; and

d. Ober Gatlinburg failed to supervise its employees on how to safely operate the rock-climbing attraction and specifically on how to harness patrons to ensure that they were properly secured before patrons began climbing up and down the rock wall.

CAUSE OF INJURIES AND DAMAGES

21. Plaintiff Sebastian Ameller has suffered damages as a direct and proximate result of the acts, omissions, breaches, failures and/or conduct of Defendant Ober Gatlinburg and its employees as specifically pled herein.

22. Plaintiff Donna Ameller has also suffered damages as a direct and proximate result of the acts, omissions, breaches, failures and/or conduct of Defendant Ober Gatlinburg and its employees as specifically pled herein.

23. The injuries and damages for which the plaintiffs seek compensation from the defendant include, but are not limited to, the following:

- a. Medical bills and expenses in the past, present for which Donna Ameller is responsible as parent of Sebastian Ameller;
- b. The cost of future medical care and treatment for Sebastian Ameller;
- c. Permanent injuries for each plaintiff;
- d. Disfigurement;

- e. Pain and conscious suffering in the past, present and future for each plaintiff;
- f. Loss of the enjoyment of life in the past, present and future for each plaintiff;
- g. Post-judgment interest;
- h. Statutory and discretionary costs; and
- i. All such further relief, both general and specific, to which Plaintiffs may be entitled to under the law.

PRAYER FOR RELIEF

WHEREFORE, premises considered, the plaintiffs respectfully demand the following:

A. That proper process be issued and served upon Defendant Ober Gatlinburg, Inc. and that it be required to answer this Complaint within the time required by the *Federal Rules of Civil Procedure*;

B. That a jury of citizens from the Eastern District of Tennessee be empaneled to hear and decide the issues joined in this matter;

C. That Plaintiff Sebastian Ameller by Donna Ameller be awarded a judgment against Ober Gatlinburg, Inc. for his damages in an amount considered fair and reasonable by a jury of citizens from the Eastern District of Tennessee not to exceed Seven Hundred Fifty Thousand Dollars (\$750,000.00);

D. That Plaintiff Donna Ameller be awarded a judgment against Defendant, Ober Gatlinburg, Inc. for her damages in an amount considered fair and reasonable by a

ury of citizens from the Eastern District of Tennessee not to exceed Two Hundred Fifty Thousand Dollars (\$250,000.00);

E. That the plaintiffs be awarded costs of this cause, as well as pre-judgment interest, post-judgment interest, court costs, discretionary costs, and such other relief as the Court deems appropriate.

Respectfully Submitted,

s/ Brad C. Burnette

Brad C. Burnette, BPR No. 024341

Attorney for Plaintiff

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